IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11262 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMI TRADERS - Petitioner(s)

Versus

VASTRAPUR GRAM PANCHAYAT - Respondent(s)

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Appearance :

MR PK PAREKH for Petitioner(s) : 1,
MR PATHIK N PATEL for Respondent(s) : 1,
MR HARSHAD K PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has prayed for a direction that the Vastrapur Gram Panchayat should

not disturb the land of the petitioner bearing survey no. 966 while constructing the internal road and should not disturb the possession of the petitioner.

2. As stated in the petition, the case of the petitioner is that he is the owner and in actual possession of plot (survey) no.966 of Vastrapur originally admeasuring 232.36 sq. mtrs. and presently admeasuring 167 sq.mtrs. It is the case of the petitioner that without any notice or following other formalities the respondent-Vastrapur Gram Panchayat started construction of an internal road in such a manner as would adversely effect the property of the petitioner particularly plot no.966. It is the case of the petitioner that the respondent has no authority to disturb the possession of the petitioner of his property or to construct a road in a manner that would diminish the size of the plot without following legal procedure.

3. Though rule was issued and interim relief granted earlier was confirmed on 17th March, 2003, no reply has been filed by the respondent. The averments made by the petitioner on oath, therefore, remain un-controverted. Respondent would have no authority to disturb the

possession of the petitioner of the land of which the petitioner is a lawful owner and in possession. Without following due process of law, the petitioner cannot be prevented from use and enjoyment of his property. Respondent is, therefore, permanently injected and prevented from constructing internal road in such a manner as would adversely effect the petitioner of his use and enjoyment on plot no.966 at Vastrapur without following due process of law. With these directions, the petition is allowed and disposed of. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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